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INTERNAL AFFAIRS BUREAU
INVESTIGATIVE SUMMARY
IV 2096494

Subjects: **Gilbert Martinez, Deputy** [redacted]
[redacted] **Sergeant** [redacted]

Date: **Incident #1- On or about May 11, 2001**
Incident #2- On or about March 18, 2002

Location: **Incident #1- Rosecrans Avenue/Crenshaw Boulevard (Lennox area)**
Incident #2- Lincoln Blvd./Rose Ave, Playa Del Rey (Marina Del Rey area)

This case pertains to allegations Subject Gilbert Martinez engaged in the solicitation of lewd acts or prostitution on two separate occasions and in two separate patrol areas. Both incidents allegedly occurred while Subject Martinez was on duty. It is also alleged that Subject [redacted] Subject Martinez' supervisor, failed to bring forth information regarding Subject Martinez' potential misconduct thereby interfering with an investigation.

On November 5, 2003, I (Sergeant Larry Gregg of Internal Affairs Bureau) was assigned this case, and retrieved all material regarding this incident from Internal Criminal Investigations Bureau, Sergeant Deborah Jones **(Refer to Exhibit A and B)**. Included in that package were reports and tape recordings of interviews. A letter of declination from the District Attorney's Office was also included.

The following is a summarized version of the evidence gathered and/and or reviewed by Internal Affairs Bureau, documenting the incident. The incidents, as referred to above have been broken into two separate summaries based on the date of the incident.

INCIDENT #1

COMPLAINANT [redacted] **FW/**[redacted]

On May 9, 2003, Internal Criminal Investigations Bureau Sergeants Deborah Jones and James Kagy interviewed [redacted] at [redacted] The interview was tape recorded. IAB Sergeant Larry Gregg reviewed the tapes and the reports and found them consistent with each other. A photograph of Ms. [redacted] is contained in **Exhibit C.**

IAB NOTE: Complainant [redacted] is an admitted prostitute with a criminal record indicating such. On tape, she indicated that she was a recovering alcoholic and indicated that she had stopped drinking in a few days prior to this interview.

Complainant [redacted] said that approximately 18 months prior to her ICIB interview, at approximately 1500 hours, she was "rousted" (questioned) by a police officer named Martinez. She said his first name had three letters in it. She could not recall the exact first name but said it was similar to "Guy." She described Martinez as a being of Mexican descent but looking white. He was approximately 5'6" tall (she said he was no taller than 5'7"), stocky build, with brown, short cut hair. His eyes were light greenish blue or hazel. She did not know what agency Martinez worked for but said he was wearing all green and his name tag on his shirt said Martinez.

IAB NOTE: A copy of Subject Martinez' DMV printout and his DMV and Department photograph are contained in **Exhibit C**.

Complainant [redacted] said Subject Martinez stopped his patrol car and spoke to her through the open driver's side window. He told her she "looked good" and had nice "tits." He asked her if she smoked "crack." She told him she didn't. He asked her for and she provided her name and other information, including where she lived. She said he did something with the information and may have queried her on the Mobile Digital Computer in his radio car. She later said she does not believe he queried her information via the computer. He commented about her age, 52, and drove off, following her slowly in his radio car. She described it as "mad-dogging me(harassing)."

IAB NOTE: The only inquiry located regarding [redacted] was at 2022 hours. This would have been after his conversation with Sergeant [redacted] **Refer to Exhibit A, page33.**

Immediately after her contact with Subject Martinez, a friend and client of her's, [redacted] drove up and she entered his car. She told [redacted] who is a private investigator that a "cop" was bothering her. While in [redacted] car she saw Subject Martinez driving on Rosecrans Avenue, turning onto Crenshaw Boulevard. She said [redacted] parked in a business parking lot at Rosecrans and Crenshaw and she went to the rear door of the "Louisiana Soul Food." She said she was going to order "to go." She said [redacted] did not go with her. Subject Martinez followed [redacted] car into the parking lot and parked his car approximately eight stalls away from [redacted] car. Subject Martinez told her to come to his car. Complainant [redacted] said she believed Subject Martinez was going to "roust" her again.

Complainant [redacted] said when she arrived at the radio car, Subject Martinez told her to get inside. Subject Martinez told her, "You look good. You can either suck my dick or catch a case. Which do you want" She later said Subject Martinez may have said, "Why don't you suck my dick or catch a case." She said either way he made the statement, she did not believe it was a request. She believed it was an order to do so. She believed "catch a case" meant she would be arrested and go to jail if she did not do what he said.

Complainant [redacted] said she sat in the rear passenger seat of the radio car while Subject Martinez stood at the door. She orally copulated Subject Martinez until he ejaculated in her mouth. She said Subject Martinez was not wearing a condom.

Complainant [redacted] said after she orally copulated Subject Martinez, he told her that if she ever got in trouble with the police, she should tell them that she was working for him. She said he may have said if she ever had problems with Gardena (indicating the police department) to let them know she worked for him (Subject Martinez). She said she made it seem to Subject Martinez that she had enjoyed the contact. She said she did this so she was not arrested and that he would believe she would not tell anyone that the incident had occurred.

Complainant [redacted] said immediately after her contact with Subject Martinez she entered [redacted] car. [redacted] told her that he had videotaped her orally copulating Subject Martinez. She said she viewed the tape via the camera. She said you could not really see anything on the video other than Subject Martinez unzipping or zipping his pants.

IAB NOTE: The ICIB report indicates that Complainant [redacted] did not learn Subject Martinez' name until after the oral copulation. The audio recording of the interview indicates that it was after the oral copulation that she learned his first name. The tape is unclear when she learned his last name, only that she had seen his name tag at some point during their contacts.

Complainant [redacted] said [redacted] told her that he had called the Sheriff's Department and talked to the Watch Commander, telling him he had video of the oral copulation. Complainant [redacted] indicated that she did not know [redacted] was going to video the incident and the fact that he had upset her. She told [redacted] that she did not want to "wake up dead." She took the video away from [redacted] She explained that life on the street was different and sometimes she had to "go along with the flow" by "kissing ass" so the "cops" would leave her alone. [redacted] said he thought what had occurred was "despicable."

Complainant [redacted] said she returned to her room at the [redacted] and told her [redacted] what had occurred. She heard a loud knock at the door. She answered it and Subject Martinez was at the door. Subject Martinez said, "I've got to talk to you. You've got a tape." She said she did have a tape and was intending to give it to him (Martinez).

IAB NOTE: Complainant [redacted] indicated that [redacted] was an elderly male who she did not want to be interviewed. She said she had only been at the [redacted] for several minutes prior to the arrival of Subject Martinez.

Complainant [redacted] said when she answered the door she said, "Phew, boy am I glad to see you. Do you know what just happened." She said she told this to Subject Martinez because if she had indicated her intention was to keep the tape and use it to sue the police, she did not believe she would live very long. She said, "You don't fuck with the cops. Especially when your out there everyday." She then said, "It all washes off. You just let it go."

Complainant [redacted] said Subject Martinez told her, "I have to talk to you. Get in the car." He told her to give him the video. She got into the radio car and then handed him the tape. Subject Martinez

told her that the Watch Commander had just contacted him. She said she was sitting in the backseat. While driving, Complainant [redacted] said she tried to ease Subject Martinez' anxiety by indicating that she was his friend and had intended to give the video of the oral copulation to him. She told him that the person who filmed the oral copulation did not understand how things worked on the streets. She said that although she said these things to Subject Martinez, she felt like, "Cutting his own dick off and shoving it up his ass. I felt like busting him. I felt like putting that film on a huge screen t.v. at a big football game at a police convention." She said she was also afraid because she did not want him to think she would "back track on him."

Complainant [redacted] said Subject Martinez drove to Rosecrans and Van Ness, behind a strip mall and Kragen Auto parts. Subject Martinez parked between two trash dumpsters. Subject Martinez told her, "Look, I've got a ring. I've got a couple of kids. I made a mistake." Complainant [redacted] said she showed compassion toward Subject Martinez to manipulate him into believing she was his friend. Complainant [redacted] said Subject Martinez burned the tape with a cigarette lighter.

Complainant [redacted] said Subject Martinez then telephoned the Watch Commander. She could only hear Subject Martinez' side of the conversation, but surmised that the Watch Commander was telling Subject Martinez to "bust (arrest) her." Martinez told the Watch Commander that he wasn't going to arrest her because she had given "it (video)" back to him and that she was being "cool to me." Subject Martinez said to the Watch Commander, "I know, I know, it won't happen again." This statement led her to believe that this incident was not the first time Subject Martinez had been in previous trouble for his relationships with prostitutes. She said Subject Martinez must have "had priors."
Complainant [redacted] said Subject Martinez offered to give her a ride back to the [redacted] She refused because there were too many "crack dealers" at the hotel. She walked back to the [redacted]

Complainant [redacted] said she did not get into Subject Martinez' car voluntarily nor was she forced. She said she got in because she didn't know what the consequences might be if she didn't get into the radio car.

Complainant [redacted] was shown a mug show up folder but could not positively identify any of the photographs as Subject Martinez. A copy of the mug show up folder is contained in **Exhibit A, page 67**.

IAB NOTE: ICIB Sergeant Jones wrote that she knew Subject Martinez from interviewing him on the [redacted] case. She said Subject Martinez looked quite different then from his Department photograph that was contained in the mug show up folder.

WITNESSES

SERGEANT STEVEN FLAMM [redacted]

Sergeant Steven Flamm was interviewed on April 29, 2003, by Internal Criminal Investigation Bureau Sergeants Jones and Kagy at Lennox Station. The interview was tape recorded and subsequently summarized by Sergeant Jones **(Refer to Exhibit A, page 13)**.

IAB NOTE: The day prior to this interview, Sergeant Jones had obtained a tape recording of a conversation between Lennox Sergeant Jimmie Johnson and an unidentied caller who had stated he (the caller) had video of a deputy being orally copulated. The recording was made from a taped telephone line at Lennox Station. **Refer to Transcriptions, Telephone Conversations.**

Witness Flamm said that a couple of weeks prior to his interview with Sergeant Jones, he had a conversation with Subject [redacted] regarding the work performance of Subject Martinez. Witness Flamm said during the conversation, Subject [redacted] seemed reluctant to say anything and seemed to be holding back some information. Approximately 3-4 minutes later Subject [redacted] told Witness Flamm that he had something that would "blow his mind." Subject [redacted] then went to a drawer and appeared to look for something. When he could not find what he was looking for he said he was going to go to his car. Approximately ten minutes later, he returned and gave Witness Flamm an audio tape **(See Telephone Transcriptions for content of tape)**. After hearing the recording, Witness Flamm immediately contacted Lieutenant Daculus and notified him regarding what he had heard because it was relevant to another investigation **(Incident #2 of this case)**.

Witness Flamm said he researched the tape recording and discovered it had occurred on May 11, 2001, and noted the time of 1927 hours. He said during his research he also discovered a second conversation **(Exhibit Telephone Conversations transcription)** between Subject Martinez and Subject [redacted] at 2011 hours.

Witness Flamm said he and Subject [redacted] had previous conversations about Subject Martinez' job performance. He said Subject [redacted] had never mentioned the tape recording in any of these previous conversations.

Witness Flamm said Subject [redacted] told him that he notified Lieutenant Zabokrtsky of the tape recording and "that was as far as it went." Subject [redacted] did not say what the content of his conversation with Lieutenant Zabokrtsky was.

IAB NOTE: Lieutenant Zabokrtsky has retired from the Department. He was interviewed by ICIB Sergeant Jones. He stated that he did not recall Subject [redacted] telling him about the allegation involving Subject Martinez. He said he does not remember being given the tape or listening to or making a copy of any audio tape regarding this allegation. He said he believes he would remember an allegation such as this. He

said he was not saying Subject [redacted] was lying but reiterated that he believes he would have remembered an allegation of this magnitude **(See Exhibit A, pages 23-25)**.

Witness Flamm said after he received the audio tape from Subject [redacted] he reviewed the Unit Details of Subject Martinez. He said there appeared to be a large amount of time of inactivity around the time Witness [redacted] had called Subject [redacted]

IAB NOTE: Subject Martinez' Unit History shows that he cleared a call at 1820 hours. Between that time and 1912 hours he queried four license plates. His Deputy Daily Work Sheet (DDWS) does not indicate that he stopped any of these cars. There is no activity shown on either his DDWS or his Unit History between 1912 and 2022 hours when he queried Complainant [redacted] DMV record twice, conducted a wanted persons check for Complainant [redacted] and then another query of her DMV record using her Driver's License number **(See Exhibit A, pages 32-34)**.

Witness Flamm said he also noted that Subject Martinez had driven "a lot of mileage that day." He said Subject Martinez' was assigned to Unit 32B and his patrol area was very near Lennox Station. He said the area of Rosecrans Avenue and Crenshaw Boulevard is approximately 6-7 miles away from his assigned area.

IAB NOTE: Subject Martinez' unit did have the ability to respond to calls outside his assigned Reporting Districts. At 1740 hours, Deputy Martinez responded to an assigned assist, Tag #197, at an address approximately 1 mile north of Rosecrans and Crenshaw. Immediately following this call he received another assigned assist approximately four miles north and west of that call and closer, or in his patrol area (south and west of Hollywood Park). **Refer to Exhibit A, page 32.**

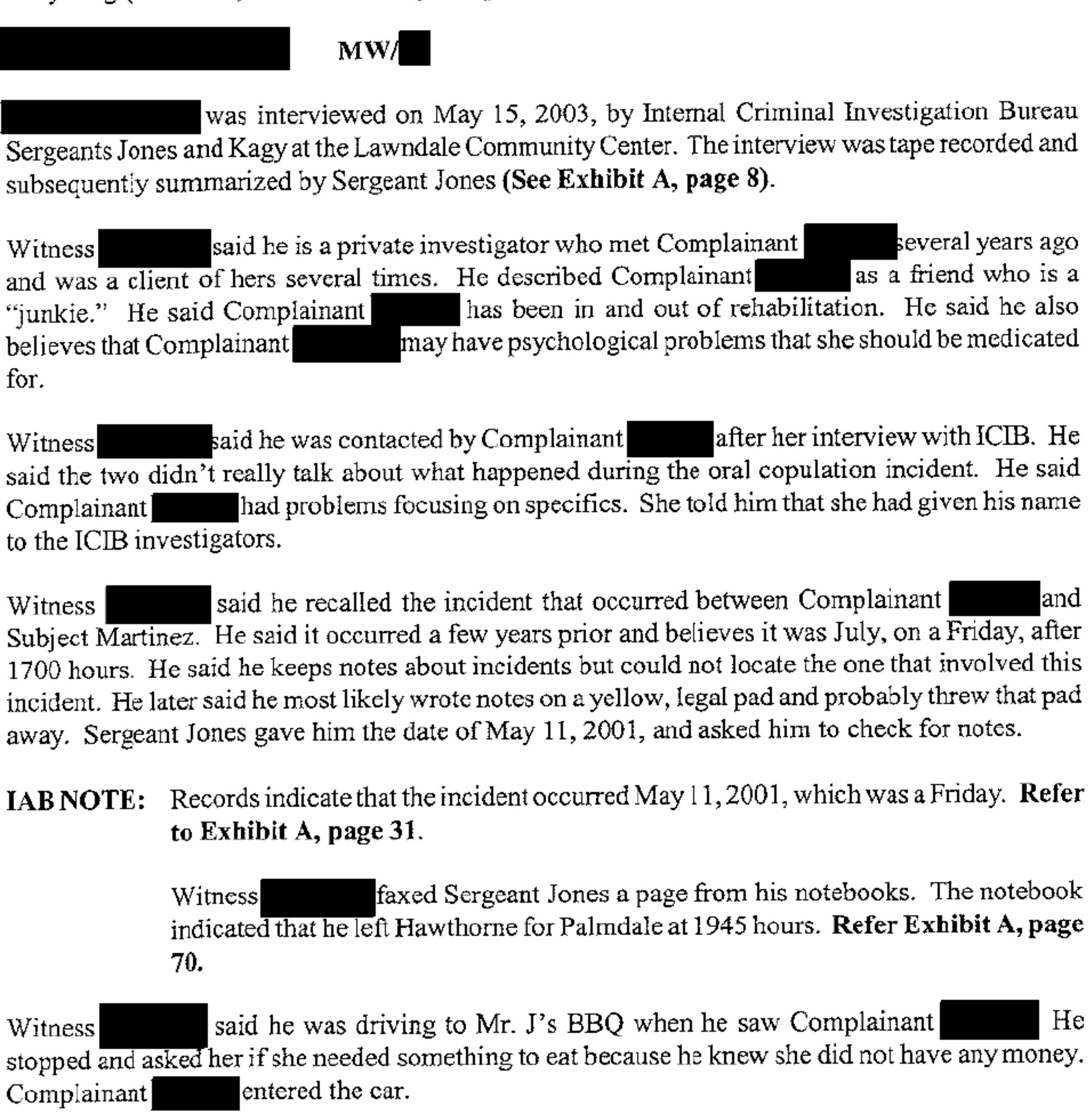
Witness Flamm said it is a common occurrence to see Subject Martinez talking to a prostitutes. He said he often saw Subject Martinez working the Central area, on Century Boulevard. Subject Martinez would be stopped, talking to a prostitute who would be leaning into his radio car. Witness Flamm said on several occasions he stopped to see if Subject Martinez needed back up. He said he was not sure if Subject Martinez was using the prostitute as an informant "or what not." He said he saw this on enough occasions to make him suspicious regarding what Subject Martinez was doing with the prostitutes. He said his suspicions arose from the fact that Subject Martinez "was not out there doing his job (making arrests.)" He said if Subject Martinez had been taking people to jail he would not have thought anything of the fact that he was talking to prostitutes.

Witness Flamm said he and Lennox Sergeant Alfred Reyes have had prior conversations regarding Deputy Martinez' work performance. He said Sergeant Reyes has noted similar activity by Subject Martinez.

Witness Flamm said approximately six months prior to his interview (November, 2002), he was

approached by a known prostitute at Century Boulevard and Inglewood Avenue. The prostitute asked him if "Gil Martinez" was working. He said she may have said "Gil or Gilbert." Witness Flamm told the prostitute he does not give out information about deputies. The prostitute asked when he would be working. Witness Flamm asked if she was a prostitute. The prostitute did not respond verbally, she smiled and walked away. He said that interaction and her response was "peculiar."

Witness Flamm described the prostitute as Hispanic, 505-507, 130-140 pounds, 20-25 years old with curly long (mid back) hair and a ruddy complexion.



[redacted] MW/[redacted]

[redacted] was interviewed on May 15, 2003, by Internal Criminal Investigation Bureau Sergeants Jones and Kagy at the Lawndale Community Center. The interview was tape recorded and subsequently summarized by Sergeant Jones **(See Exhibit A, page 8)**.

Witness [redacted] said he is a private investigator who met Complainant [redacted] several years ago and was a client of hers several times. He described Complainant [redacted] as a friend who is a "junkie." He said Complainant [redacted] has been in and out of rehabilitation. He said he also believes that Complainant [redacted] may have psychological problems that she should be medicated for.

Witness [redacted] said he was contacted by Complainant [redacted] after her interview with ICIB. He said the two didn't really talk about what happened during the oral copulation incident. He said Complainant [redacted] had problems focusing on specifics. She told him that she had given his name to the ICIB investigators.

Witness [redacted] said he recalled the incident that occurred between Complainant [redacted] and Subject Martinez. He said it occurred a few years prior and believes it was July, on a Friday, after 1700 hours. He said he keeps notes about incidents but could not locate the one that involved this incident. He later said he most likely wrote notes on a yellow, legal pad and probably threw that pad away. Sergeant Jones gave him the date of May 11, 2001, and asked him to check for notes.

IAB NOTE: Records indicate that the incident occurred May 11, 2001, which was a Friday. **Refer to Exhibit A, page 31.**

Witness [redacted] faxed Sergeant Jones a page from his notebooks. The notebook indicated that he left Hawthorne for Palmdale at 1945 hours. **Refer Exhibit A, page 70.**

Witness [redacted] said he was driving to Mr. J's BBQ when he saw Complainant [redacted] He stopped and asked her if she needed something to eat because he knew she did not have any money. Complainant [redacted] entered the car.

Witness [redacted] said that inside the restaurant, Complainant [redacted] told him that she was being harassed by a deputy. He believed she indicated she had been harassed by this deputy for the past week. She described the deputy as a"nuisance." He said he believed the deputy had been stopping her, harassing her and filling out "F.I. cards." He said Complainant [redacted] told him the Deputy's name was "Martinez" While in the restaurant but prior to ordering any food, Complainant [redacted] exited the restaurant via the rear door. She told Witness [redacted] she would be back in a few minutes.

Later in the interview, Witness [redacted] stated that Complainant [redacted] had stated that she had to give Subject Martinez "a blow job to get him off my back." Witness [redacted] said Complainant [redacted] had made this statement both before she went to the parking lot and after her return. He then said that he and Complainant [redacted] had spoken about her orally copulating Subject Martinez prior to this date when he had seen her. He had told her that "she didn't have to do that." To the best of his knowledge this was the first time Complainant [redacted] had orally copulated Subject Martinez. He indicated that Complainant [redacted] was in possession of a condom when she went to the parking lot.

Witness [redacted] said he ordered some food. Approximately 10 minutes later, when Complainant [redacted] had not returned, he went to the parking lot to look for her. He said he did not see Complainant [redacted] but did see a radio car backed into a parking stall, at the west end of the parking lot. The deputy was standing at the rear, open door of the radio car with his hands on top of the car. The deputy appeared to be leaning into the car. He said he could see somebody else in the backseat of the radio car, but did not know it was Complainant [redacted] until later. He said the person in the backseat was orally copulating the deputy. He could not tell if the person was on the backseat or the ground. He said he couldn't see much but could tell what was occurring.

IAB NOTE: Witness [redacted] made a drawing of the parking lot, **See Exhibit A, page 71.** Photographs of the area were taken, **See Exhibit A, pages 51-58.**

Witness [redacted] said he moved his car to a position where he could video tape the oral copulation. He said he it was difficult to see the oral copulation but did see the deputy's face. He said he taped the last 2-3 minutes of the oral copulation. He said after the oral copulation he could see Deputy Martinez adjust his belt and zipper.

Witness [redacted] said he went back to the restaurant and was joined by Complainant [redacted] several minutes later. Complainant [redacted] told him that the deputy had told her that he would leave her alone "if she gave him a blow job." Witness [redacted] said this "incensed" him.

Witness [redacted] went to his car and telephoned the Lennox Sheriff's Station and spoke to someone named [redacted] He could not remember if [redacted] was a deputy or sergeant. He told [redacted] what he had seen and that he had video taped the incident. He told [redacted] the deputy's name was Martinez. [redacted] told him to bring in the video tape. Witness [redacted] said he would think about

it and then hung up. He said he did not recall [redacted] talking to anyone during his conversation on the telephone. He said he didn't feel right about giving the video to [redacted] because it "just didn't feel like that was the right thing to do." He said his reluctance was confirmed when it became obvious to him that [redacted] had advised Subject Martinez (or so he believes), who then arrived at Complainant [redacted] home and retrieved the tape.

Witness [redacted] returned again to the restaurant. He told Complainant [redacted] that he had called Lennox Station. Complainant [redacted] told him, "You've got to give me that tape." Witness [redacted] reluctantly gave her the tape, against his better judgement. Witness [redacted] then left the restaurant alone. He said he was unsure if Complainant [redacted] ever ordered any food.

Witness [redacted] said he spoke to Complainant [redacted] the next week. She told him that within an hour of him leaving the restaurant, Subject Martinez showed up at her room at the [redacted] Subject Martinez demanded the tape and Complainant [redacted] gave it to him. Complainant [redacted] told him ([redacted]) that she was afraid she would "get a beating" if she did not give the tape to him. Subject Martinez told her that he appreciated that she gave him the tape and that "if she ever needed a favor or anything, to just let me know." Complainant [redacted] told Witness [redacted] that she did not want him to anything further about the incident and so he did not. He said he wanted to pursue it but Complainant [redacted] told him not to. She feared she would end up in the hospital or arrested if he did pursue it. He said he reluctantly agreed not to pursue the incident.

Witness [redacted] said that 2-3 weeks after the incident he saw a radio car at a local market at 147th Street and Crenshaw Boulevard. He went inside and struck up a casual conversation with the deputy. He said the deputy's name tag said "Martinez." He described this individual as [redacted] years old, possibly younger. He said the deputy had large arms, dark brown or black hair, brown eyes and clean shaven. He said he did not hear any accent in the deputy's voice.

Witness [redacted] was shown a mug shot folder. He identified either picture number two or picture number three as Subject Martinez but could not be sure. He said it was more likely number three. **See Exhibit A, page 69**.

IAB NOTE: Subject Martinez was in the number two position of the mug show up folder.

Witness [redacted] was played a tape recording of his conversation with Subject [redacted] He identified his voice as being tape recorded.

Witness [redacted] was asked if he felt she was forced to orally copulate Subject Martinez. He said he really didn't believe she was forced but she told him she had to do it.

Witness [redacted] said Complainant [redacted] lied to him once in the past. He said he was watching her and she told him she was someplace else.

Witness [redacted] said he returned to the restaurant and Complainant [redacted] returned inside several minutes later.

IAB NOTE: A second interview of Witness [redacted] was included in the recordings retrieved from ICIB. This interview was conducted on May 12, 2003, via the telephone. Witness [redacted] was using his cellular telephone and the reception was intermittent and eventually Sergeant Jones and Witness [redacted] agreed to meet at a later date, in person to conduct the interview.

SERGEANT ALFRED REYES [redacted]

Sergeant Al Reyes was interviewed on January 22, 2004, by IAB Sergeant Larry Gregg via the telephone. Prior to the interview, Witness Reyes indicated that he understood the Witness Administrative Rights Admonition. The interview was digitally recorded.

Witness Reyes said he knows Subject Martinez. He said he supervised him on Early Morning Shift. He said that he and other sergeants (Flamm and Thrall) had noticed a lack of productivity from Subject Martinez. The three sergeants spoke to Subject Martinez about his job performance approximately 18 months ago. After that counseling session, Deputy Martinez' productivity did improve.

Witness Reyes said that he had noticed Subject Martinez talking to prostitutes. He said he spoke with Subject Martinez and told him that it was not a good idea to talk to or use information from prostitutes. He said he has never seen Subject Martinez engaged in any improper conduct with prostitutes. He did say he was present when a prostitute spoke with Sergeant Flamm, but was inside his car and too far away to hear what was being said.

SUBJECT INTERVIEWS

Subject Gilbert Martinez was not interviewed by Internal Criminal Investigations Bureau investigators at the request of his attorney, Elizabeth Gibbons (**See Exhibit A, pages 26-27**).

INCIDENT #2

COMPLAINANT [redacted]

[redacted] was interviewed by Internal Criminal Investigations Bureau Sergeant Deborah Jones on March 21, 2002. Complainant [redacted] was in custody after being arrested by LAPD on March 20, 2002. She had informed LAPD Sergeant [redacted] that she had information regarding a Sheriff's Deputy using her prostitution services. Sergeant [redacted] was also present for the interview

to ascertain if any LAPD members were implicated by Complainant [redacted] The interview was tape recorded.

Complainant [redacted] was interviewed two other times by ICIB Sergeants Jones and Kagy. Those interviews were also tape recorded and the following is a compilation of the different interviews.

Complainant [redacted] said on March 18, 2002, at approximately 0400 hours, she was standing at the corner of Lincoln Boulevard and Rose Avenue, looking for someone to buy her prostitution services when she was contacted by a lone deputy driving a radio car. She would later state that she was positive that the day was Monday night/Tuesday morning, making the date March 19, 2002.

IAB NOTE: ICIB investigators checked the in-service for March 19, 2002 and found only two male deputies working single person cars. Neither of them matched the description given by the complainant.

IAB NOTE: Lincoln Boulevard and Rose Avenue is one block south of the City of Santa Monica and in the area of Venice (LAPD patrol area) **(Refer to 2001 Thomas Guide, page 671, G-5)**.

Complainant [redacted] said she assumed the deputy was going to "harass" her. She said she then recognized the deputy as the same one who had saved her life in 1993 or 1994 in the West Hollywood area. She told him she remembered him and the deputy indicated that to her that he was the deputy who saved her. The deputy asked her what she was doing on the street and other questions about her prostituting. He asked her what the craziest thing she had ever done, how much she charged her dates and if she was busy later that night.

She described the deputy as Hispanic, but he later told her he was French, in his [redacted] 5'06" to 5'07" tall, with a medium build. She described his uniform as tan and green with two stripes. The deputy had no facial hair, pierces or tattoos. The deputy told her he was married but recently separated from his wife, who he described as a big women and white. He told her that he liked big women. He told her he did not have any children, lived in Orange County and works overtime in Marina Del Rey a couple days a week. He said he also worked "a rough neighborhood a couple nights a week." She said he worked the Inglewood area. LAPD Sergeant [redacted] asked if the deputy worked Lennox. She said he may have been referring to Lennox. Complainant [redacted] said she knew the difference between a Sheriff's car and an LAPD car. She said she has worked all across the country and knows the difference between police cars and the Departments they are assigned to. She said the Sheriff's car has a star on it. She said this radio car had cloth seats.

IAB NOTE: The only deputy working overtime on March 18, 2003, was Subject Gilbert Martinez, regularly assigned to Lennox Station **(See Exhibit B, page 28)**.

Complainant [redacted] said she and the deputy talked for approximately 30-40 minutes. During that time, she saw several LAPD radio cars drive by. They talked about the incident when the deputy had

saved her life after a date had attempted to kill her and she had run from his car naked. She later said she was pushed from the car naked. She said the deputy, who she was now talking to, had driven by and saved her. She said the deputies wrote reports about the incident but she did not know what name she gave them. She knew the deputy knew remembered the incident because he said,, "I was checking you out naked. When you were naked."

IAB NOTE: Ms. [redacted] has 34 AKA's. ICIB investigators could not find any reports listing her as a victim from the West Hollywood area. Subject Martinez was never assigned to West Hollywood Station stated in his interview with ICIB that he had not worked any overtime there until several months prior to this interview.

Complainant [redacted] said the deputy told her about a call he had responded to earlier in the night where someone was having sex in a car. He contacted the couple, told them to get dressed and leave. He said later, someone called and complained that he had not arrested anyone.

IAB NOTE: ICIB investigators conducted a query and found that on March 18, 2003, at 2254 hours, Deputy Martinez responded to tag #97. The call stated that a male and female were in the back seat of a vehicle **(Refer to Exhibit B, page 36).**

A Watch Commander's Service Comment Report, #10902, was completed when the call's informant contacted Marina Del Rey Station to complain that the people in the car were not arrested. The Watch Commander's Service Comment Report indicates that the informant, Mr. [redacted] called to complain that desk personnel were discourteous **(Refer to Exhibit B, page 26).**

Complainant [redacted] said the deputy asked her if she ever "did it" in a radio car or if she he had ever dated a Sheriff. She told him she had never dated a Sheriff but had dated cops in New York. The deputy asked her for a date but said his wallet was at the "patrol house." He said he could not retrieve his wallet without signing in and out. Complainant [redacted] said she agreed to have sex with the deputy on an "IOU." She said a police officer would not "burn" her (not pay for the sexual services). They discussed $40.00 for a "blow job." The deputy asked for a "police discount." They finally agreed on $30.00 for oral copulation. She said the deputy originally only wanted a "blow job," but then asked to "fuck" her in the car.

Complainant [redacted] said she reluctantly entered the radio car's front seat. She was reluctant because she didn't want to be seen in the radio car because she would be perceived as an informant for the deputy. The deputy drove around, looking for an alley, stopping in an alley near a Smart and Final store, at Sunset Avenue, east of Lincoln Boulevard. She said the car did not have a shotgun and had an older computer in comparison to the one's LAPD have.

IAB NOTE: The investigator contacted Marina Del Rey Station and spoke with Lieutenant Sheri Anderson. She could not locate the vehicle slip for Subject Martinez on March 18, 2003. She also stated that Lincoln Boulevard and Rose is outside of Marina Del

Rey's patrol area.

Complainant [redacted] said the deputy, while still seated in the radio car, unzipped his pants and removed his penis. She placed a condom on his partially erect penis. She said his penis was not circumcised. In a later interview, she stated the deputy's penis was circumcised. She said she "just remembered" that the deputy was circumcised.

Complainant [redacted] said she performed "oral sex" until the deputy became fully erect. The deputy sucked on her breasts but did not ejaculate. He said he wanted to "break in" the radio car and asked her if he could"do it doggy style?" The deputy exited the car and walked around to the passenger side. Complainant [redacted] moved onto her hands and knees on the seat, with her shorts removed and her feet were extended out of the passenger door. She was facing the driver's door of the radio car. Her hands were on the seat, one on the back rest the other on the seat. The deputy inserted his penis into her vagina and ejaculated after approximately four minutes. She knew he had ejaculated because she saw semen inside the condom. She said she held the tip of the condom as he pulled his penis out of her vagina to prevent semen from spilling on her. The deputy removed the condom and threw it on the ground near the radio car. He told her the sex "felt good." He mentioned he would see her again. She said that during the entire incident, the deputy did not appear nervous or scared, even though they were in an LAPD area.

IAB NOTE: On March 25, 2002, Complainant [redacted] drew a map of where she talked to the deputy and where she believes the two went during their sexual encounter. On March 26, 2002, she was again interviewed in an attempt to clarify where the radio car was parked. Complainant [redacted] knew the general area where the two were parked but did not know the exact alley. She said, "They all look the same." The ICIB investigator checked the alley Complainant [redacted] described. She found several used condoms and condom wrappers. No evidence was retrieved because it was unclear if that was the correct alley and the fact that it had rained for several days prior to the search of the alley.

Complainant [redacted] said that during one of the sexual acts she leaned against something that made a noise. She described the noise as a. "Beep, beep, beep." She said the deputy quickly looked to see what she had touched. LAPD Sergeant [redacted] asked if it was the "Help button." She said it could have been the Help button. She said at two other times during her contact with the deputy, he received two calls on his computer and checked to see if they were his, but they weren't.

IAB NOTE: Subject Martiez' computer records indicate that between 0349 hours and 0449 hours, Subject Martinez received three computer messages. One from The Marina Del Rey Watch Sergeant computer terminal and two from unit 31. Subject Martinez responded to unit 31's messages at 0450 hours **(See Exhibit D).**

Complainant [redacted] said after the sexual acts the deputy looked at his computer screen and told her he had to leave to do his last minute checks. She asked what time it was. He told her it was

0500 hours. He drove her back to the corner where he picked her up and told her he would bring her money back to her on his way home. She said she tried to kill time so she could accompany him close to the Sheriff's Station, so she could get her money. He told her he couldn't do that because he needed to make his last minute checks. She said she waited at until approximately 0530 and then went to her room at the [redacted] without seeing the deputy again. She stayed in the room until her arrest on March 20, 2002, by LAPD.

IAB NOTE: The ICIB Investigator contacted the manager of the [redacted] He told the investigator that Complainant [redacted] arrived at the Motel on March 11, 2002, and stayed 4-5 days. He said he was contacted by Complainant [redacted] after her arrest when she told him she needed to make arrangements to pick up her belongings.

Complainant [redacted] said that at one point during the evening, the deputy typed her name and room number on a blank computer screen in his radio car. She said he never used his radio during the time she was with him.

IAB NOTE: Subject Martinez' Deputy Daily Work Sheet shows that he generated a Directed Patrol call at 0253 hours and completed the call at 0400 hours **(See Exhibit B, page 34)**. The "?" shown next to the time of 0400 time indicates that is not the actual time of completion. It indicates the time was changed. The actual time is revealed on the Unit History as 0510 hours **(See Exhibit B, page 35)**.

Complainant [redacted] said she could identify the deputy if she saw him again. She said she tries to remember all of her clients because she doesn't want to be killed.

IAB NOTE: Complainant [redacted] was shown two mug show up folders containing six pictures each. She was unable to identify Subject Martinez in the show up folder containing Subject Martinez' photograph. She did indicate that the deputy's build was similar to phot #1 (Subject Martinez). The second group of pictures (marked #2) contained a photograph of Deputy [redacted] the Watch Deputy on March 18, 2003, and the only other deputy who would have had two stripes on his uniform. Complainant [redacted] did not identify Deputy [redacted] as the deputy she had a sexual encounter with but indicated the deputy's build was similar to Deputy [redacted] **(See Exhibit B, pages 39-42)**. Complainant [redacted] was shown a third series of photographs **(See Exhibit B, page 45)**, one of which was Subject Martinez (position #3). Complainant [redacted] could not identify the deputy she had the sexual encounter with. She said, "It's definitely not none of these people."

Complainant [redacted] provided hairs from her pubic area and head for comparison to hair fibers collected from the interior of the radio car Subject Martinez was driving on March 18, 2003 (Vehicle #1629).

IAB NOTE: The hairs retrieved were compared to hairs by Senior Criminalist Stephen Schliebe. His report stated that the hairs were similar in characteristics but could not be positively identified as coming from the same person because no hair root was recovered **(See Exhibit B, page 18)**.

On April 21, 2003, Lennox Station Lieutenant Deculus and Sergeant Flamm interviewed [redacted] at her apartment, 622 Wall Street. The interview was tape recorded.

Complainant [redacted] said she remembered her interviews with ICIB investigators. She restated her previous statements. She added that the deputy brought up the incident from West Hollywood. She was asked if she was sure it was the deputy who first recalled the incident in West Hollywood. She said, "I'm pretty sure, positive that it was him."

IAB NOTE: Complainant [redacted] originally stated, in her ICIB interview that the incident occurred in 1993 or 1994. In a subsequent interview with ICIB, she stated the incident occurred between 1995 and 1997. During this interview, she stated the incident occurred in 1989 or 1990.

Complainant [redacted] said she was most likely using an AKA when she was the victim during this incident. She said she believes she had a warrant and therefore used the AKA.

IAB NOTE: In her interviews with ICIB, Complainant [redacted] said she had used her true name (Palkowitz) when telling the West Hollywood deputies her name.

Complainant [redacted] said she was inside a camper when she was assaulted in West Hollywood.

IAB NOTE: In her interview with ICIB investigators, Complainant [redacted] said she was assaulted in a U-Haul.

Complainant [redacted] then spoke about the night she had a sexual encounter with the deputy. She said she had told the deputy where she was living. She indicated that the deputy had come to her room after he finished work but she did not open the door because she had narcotics in the room.

IAB NOTE: In her ICIB interview, Complainant [redacted] said she had waited for approximately 30 minutes at the corner of Lincoln Boulevard and Rose. She then returned to her motel room and was never contacted by the deputy.

Complainant [redacted] said she remembers that the deputy indicated this was the first time he had done anything like that (sex on duty). She also said she did not remember if the deputy was circumcised.

IAB NOTE: In her ICIB interviews she initially stated the deputy was uncircumcised. She later changed that statement and indicated the deputy was circumcised.

Complainant [redacted] said she believes she guided the deputy to an alley where the sexual encounter occurred. She said she does not recall what alley that was and said she could not locate it on a map but could most likely locate it through picture.

IAB NOTE: During her ICIB interviews, Complainant [redacted] was shown maps, drew a map and was shown pictures but could not identify the alley.

The remainder of Complainant [redacted] statement to Lieutenant Deculus and Sergeant Flamm was substantially the same as her previous statements.

SUBJECT INTERVIEWS

SUBJECT GILBERT MARTINEZ, DEPUTY [redacted]

Subject Gilbert Martinez was not interviewed by Internal Criminal Investigations Bureau investigators at the request of his attorney, Elizabeth Gibbons **(See Exhibit A, pages 26-27)**.

Subject Martinez was interviewed by IAB Sergeants Larry Gregg and John Harris on January 8, 2004. A transcribed summary of that interview is contained in this report **See Subject Martinez transcription.**

SUBJECT [redacted] SERGEANT [redacted]

Subject [redacted] was interviewed by ICIB Sergeants Jones and Kagy on May 19, 2003, at Lennox Sheriff's station. The interview was tape recorded and a transcribed summary of that interview is contained in this file, See **Subject [redacted] ICIB transcription.** He was also interviewed by Internal Affairs Sergeant Larry Gregg and that interview was also transcribed. A summarized version of Subject [redacted] interview is contained in **Exhibit A, pages 17-22.**

Subject [redacted] was interviewed on January 14, 2004, by IAB Sergeants Larry Gregg and John Harris. The interview was digitally recorded and a transcribed summary can be found in **Subject [redacted] Transcription.**



County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



LEROY D. BACA, SHERIFF

April 8, 2004

Deputy Gilbert Martinez, [redacted]

Deputy Martinez:

You are hereby notified that it is the intention of the Sheriff's Department to discharge you from your position of Deputy Sheriff, Item No. 2708A, with this Department, effective at the close of business on April 29, 2004.

An investigation under File Number IAB 2096494, conducted by Internal Affairs Bureau, coupled with your own statements, has established the following:

1. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or 3-01/050.10, Performance to Standards; and/or 3-01/050.05, Performance of Duty; and/or 3-01/030.07, Immoral Conduct, on or about March 18, 2002, while on duty and in your patrol vehicle, you engaged in sexual acts with a prostitute known as [redacted] including but not limited to, receiving oral sex and/or engaging in sexual intercourse. By your actions, you have brought discredit upon yourself and the Los Angeles County Sheriff's Department.

2. That in violation of Manual of Policy and Procedures Sections 3-01/040.70, False Statements and/or 3-01/040.75, Failure to Make Statements and/or Making False Statements During Departmental Internal Investigations, on or about January 8, 2004, you made false statements during an internal investigation about engaging in sexual acts with a prostitute known as [redacted]

3. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or 3-01/050.10, Performance to Standards; and/or 3-01/050.05, Performance of Duty; and/or 3-01/030.07, Immoral Conduct, on or about May 11, 2001, while on duty and in your patrol vehicle, you engaged in sexual acts with a prostitute known as [redacted] including but not limited to, receiving oral sex. By your actions, you have brought discredit upon yourself and the Los Angeles County Sheriff's Department.

4. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior and/or 3-01/030.15, Conduct Toward Others, on or about May 11, 2001, while on duty and in your patrol vehicle, you used your position as a law enforcement officer to obtain sexual favors from a prostitute known as [redacted] when you informed her that she could orally copulate you or "catch a case," or words to that effect. By your actions, you have brought discredit upon yourself and the Los Angeles County Sheriff's Department.

5. That in violation of Manual of Policy and Procedures Sections 3-01/040.65, Tampering With Evidence and/or 3-01/040.76, Obstructing an Investigation, on or about May 11, 2001, you destroyed and/or burned a video tape which purportedly showed you receiving oral sex from a prostitute while on duty.

6. That in violation of Manual of Policy and Procedures Section 3-01/030.10, Obedience to Laws, Regulations and Orders, on or about May 11, 2001, you had a public contact with [redacted] made a driver's inquiry on the Mobile Digital Terminal (MDT), and then failed to log the public contact, in violation of Field Operations Directive 00-04.

7. That in violation of Manual of Policy and Procedures Sections 3-01/040.70, False Statements and/or 3-01/040.75, Failure to Make Statements and/or Making False Statements During Departmental Internal Investigations, on or about January 8, 2004, you made false statements during an internal investigation about engaging in sexual acts with a prostitute known as [redacted] and/or about destroying a video tape purportedly showing you receiving oral sex from Ms. [redacted]

You may respond to the intended action orally or in writing. In the event that you choose to respond orally to these charges, you have already been scheduled to meet with A/Chief Ronnie Williams on April 27, 2004, at 1000 hours, in his office, which is located at Sheriff's Headquarters Building, 4700 Ramona Boulevard, Monterey Park on the 4th Floor. If you are unable to appear at the scheduled time and wish to schedule some other time prior to April 27, 2004, for your oral response, please call A/Chief Williams' secretary at [redacted] for an appointment.

If you choose to respond in writing, please call A/Chief Williams' secretary to cancel your scheduled appointment, and send your response to the facts contained in this letter to A/Chief Williams' office by no later than April 27, 2004.

Unless you are currently on some other type of authorized leave, pursuant to Rule 16.01 of the Los Angeles County Civil Service Commission Rules, effective immediately, you are on paid administrative leave which will continue during the fifteen (15) business days you have to respond to the intended discharge or until the conclusion of your pre-disciplinary hearing. If you are presently on an authorized leave, that leave will continue during the fifteen (15) business days you have to respond to the intended discharge, or until the conclusion of your pre-disciplinary hearing.

Failure to respond to this Letter of Intent within fifteen (15) business days will be considered a waiver of your right to respond and will result in the imposition of the discipline indicated herein.

If you did not receive the investigative material on which your discipline is based at the time you were served with this correspondence, you may contact the Internal Affairs Bureau at (323) 890-5300, to obtain a copy of the case file.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

LEROY D. BACA, SHERIFF

Eric B. Smith

Eric B. Smith, Captain
Commander, Internal Affairs Bureau

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures.

EBS:lh

c: Advocacy Unit
Employee Relations Unit
A/Chief Ronnie Williams, FORII
Internal Affairs Bureau
Office of Independent Review (OIR)
(File #2096494)

LOS ANGELES COUNTY DISTRICT ATTORNEY **CHARGE EVALUATION WORKSHEET**	☐ Further investigation requested. ☐ Probation Violation in lieu of filed. ☒ Prosecution declined.	DA CASE NO. 23627626	Page 1 of 6 Date: August 18, 2003
		POLICE CASE NO. (DR OR URN NO.) 403-00040-2002-127	DA OFFICE CODE J.S.I.D. 03-0502R

SUSPECT DATA

NO.	SUSPECT NAME	BKNG NO.	CHARGE	REASON
01	MARTINEZ, GILBERT	N.I.C.	PC288a(k)	H - Other
			PC182(a)(5)	H - Other
			PC647(b)	H - Other
			PC153	H - Other
02	[redacted]	N.I.C.	PC182(a)(5)	H - Other

DESCRIPTION
SEE ATTACHED.

STEVE COOLEY District Attorney	COMPLAINT DEPUTY (PRINT) DANIEL W. BAKER/smm	DEPUTY CODE 168496	COMPLAINT DEPUTY (SIGNATURE) Daniel W. Baker	REVIEWING DEPUTY RJ

27B

In submitting this matter for consideration of a complaint, written reports of substantially all available evidence (except as to the oral information, if any, purporting to have been given by me and which is fully and correctly stated above) have been submitted to the above-named Deputy (copies of which are attached hereto) except the following:

The disposition of this matter will be final unless the commanding officer requests reconsideration of the case, stating his reasons on the back of this form.

MAILED 08/19/03

OFFICER - DET. DEBBIE JONES

L.A.S.D. I.C.I.B.

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of allegations that Deputy Gilbert Martinez, [redacted] engaged in an act of prostitution with [redacted] a violation of Penal Code section 647(b), demanded that [redacted] orally copulate him or face arrest, a violation of Penal Code section 288a(k), and that he concealed his criminal conduct by destroying evidence, a violation of Penal Code section 153. The evidence was also evaluated to determine whether it could be proven that Deputy Martinez and Sergeant [redacted] conspired to obstruct justice, a violation of Penal Code section 182(a)(5). For the reasons set forth below, we decline to initiate criminal proceedings against Deputy Martinez and Sergeant [redacted]

STATEMENT OF FACTS

The following analysis is based on reports of the Los Angeles County Sheriff's Department, Internal Criminal Investigations Bureau, submitted to this office on June 16, 2003, by Detective Debbie Jones.

[redacted] told I.C.I.B. investigators that on March 18, 2002, she orally copulated a L.A.S.D. deputy and then allowed him to have sexual intercourse with her for $30. However, he did not pay her. The deputy was "Hispanic looking," about 5'6" to 5'7", and of French descent. He was working alone. He had two stripes on his uniform. He said that he was married, had two children and worked Marina Del Rey on overtime. The deputy told her he had responded earlier in his shift to a call of a couple having sex in a car. He had not arrested them but advised them to get dressed and leave the area. He told her someone called and complained that he had not arrested them. At about 5:00 a.m., he told her he had to leave because his shift was about to end.

Deputy Martinez was the only male Hispanic who was working alone on that shift and was the only deputy working that shift who was not stationed at Marina Del Rey. Deputy Martinez's Daily Worksheet revealed that he had responded to a call of two people having sex in a car at 11:03 p.m. and finished the call at 11:13 p.m. He did not arrest either of the people and the reporting party called the watch commander to complain that no one was arrested.

According to L.A.S.D. Sergeant [redacted] L.A.S.D. Sergeant Steven Flamm told him of the allegation made by [redacted] Sergeant [redacted] then told Sergeant Flamm of a similar allegation that had been made about Deputy Martinez in May of 2001, which led investigators to [redacted]

[redacted] was interviewed by investigators on May 9, 2003. She told investigators that about one and one-half to two years earlier she had been in the vicinity of Crenshaw Boulevard and Rosecrans Avenue when she was detained by a peace officer wearing a green uniform. She had not seen this officer before and at this time did not know his name. He obtained her personal information, made some inappropriate remarks to her and drove off. A friend of hers named [redacted] then picked her up and drove her to a nearby fast-food establishment. When she got out of [redacted] car, that same peace officer pulled into the parking lot in a patrol car and motioned for her to come to his car. She complied. [redacted] stayed in his car and did not

move. The peace officer told her to "suck his dick or catch a case," which she took to mean perform oral sex on him or go to jail.

[redacted] sat in the seat of the patrol car and orally copulated the peace officer as he stood at the open door. He wore no condom and ejaculated in her mouth. After she orally copulated the peace officer, she met again with [redacted] [redacted] told her he had videotaped the encounter and that he had called the watch commander. She viewed the tape but could not see the actual oral copulation. The peace officer could clearly be seen zipping his pants up. She told [redacted] that "You don't fuck with the police . . . " and demanded that he give her the tape. [redacted] gave her the tape and she went home.

Shortly after [redacted] returned home, the peace officer came to her door and told her to come with him because he wanted to talk to her. The peace officer drove her to the rear of a strip mall near Rosecrans Avenue and Van Ness Boulevard. There he cried, told her that he was married with two children, and pleaded with her not to tell anyone. She gave him the video tape and he burned it with a cigarette lighter. He also called his watch commander and told him that he got the tape and that [redacted] did not want any problems. He then left and she walked to her residence. She learned that the peace officer's name was Martinez from seeing his name tag and because he told her if she was ever stopped by the police, to tell them that she was working for Martinez.

Investigators interviewed [redacted] on May 12 and 15, 2003. [redacted] claims to be a licensed private investigator. [redacted] told investigators he has known [redacted] for about two or three years. She is a prostitute and a "junkie" who has psychological problems which would be helped by medication. He met [redacted] while she was street hustling. He "dated" her, and still sees her occasionally. On May 11, 2001, he met her while driving in the area of Crenshaw Boulevard and Rosecrans Avenue. They went into a restaurant. [redacted] told [redacted] that a deputy had been demanding sex from her for about a week, that he had a condom, and that she had better do it to get him off her back. [redacted] told her she didn't have to do that, but [redacted] slipped out the back door before they ordered their meal. After about 10 minutes, he went outside and saw Deputy Martinez being orally copulated by [redacted] He retrieved his video camera and videotaped the last two or three minutes of their encounter.

[redacted] returned to the restaurant where he was joined by [redacted] [redacted] told him that Deputy Martinez told her he would leave her alone if she gave him a blow job. [redacted] became angry. He called the Lennox Sheriff's Station and told the watch commander that he had a video of a Deputy Martinez receiving "oral pleasure," and that Deputy Martinez should be told to "keep it in his pants." The watch commander wanted [redacted] to bring the video tape to the station, but [redacted] had other things to do and hung up. He returned to the restaurant and finished eating. He told [redacted] what he had done. She demanded the tape, which he gave to her. He then left.

Investigators interviewed Sergeant [redacted] on May 19, 2003. Sergeant [redacted] listened to an audio tape of [redacted] May 11, 2003, phone call. He verified that he was the watch sergeant who received the call. On the audio tape, Sergeant [redacted] can be heard asking, "Did you stop a

chick down there at Rosecrans and Crenshaw?" A male voice can be heard replying, "Yeah, what about it?" Sergeant [redacted] can be heard asking if she was a "streetwalker," followed by some muffled voices. He can then be heard saying, "He claims that there was oral pleasure going on. I bullshit you not." The other male voice responds, "Oh, fuck," and the tape-recording ends. Sergeant [redacted] identified the male voice as that of Deputy Martinez.

Sergeant [redacted] recalled that he immediately advised Lieutenant David Zabokrtsky, who was the watch commander, of the allegations. Lieutenant Zabokrtsky told him to locate where Deputy Martinez was working and call him in. When Sergeant [redacted] found that Deputy Martinez had been in the area of Crenshaw Boulevard and Rosecrans Avenue, he felt uneasy and summoned Deputy Martinez to the station. Deputy Martinez arrived at the station while Conaway was still on the phone.

Sergeant [redacted] also admitted Deputy Martinez called 30 to 40 minutes after [redacted] call and asked to be transferred to a line which was not being recorded. Sergeant [redacted] transferred Deputy Martinez to a different line and had a conversation with him about his encounter with [redacted] Deputy Martinez told Sergeant [redacted] that he had detained [redacted] earlier, denied any wrongdoing, and claimed that [redacted] was a jealous boyfriend who seemed to be around every time Deputy Martinez contacted Conroy. Sergeant [redacted] may have told Deputy Martinez to go out and find [redacted] and asked him if he had seen anyone suspicious out there who might have been filming him. Sergeant [redacted] had no conversation with Deputy Martinez in which Deputy Martinez claimed to have located [redacted] As far as Sergeant [redacted] recalled, Deputy Martinez was unable to locate [redacted] that night.

Lieutenant Zabokrtsky has retired from the L.A.S.D. He was interviewed by investigators on May 12, 2003. He had no memory of being advised by Sergeant [redacted] of the allegations made by [redacted] or of this incident ever occurring.

According to L.A.S.D. records, the call by [redacted] was made at 7:27 p.m. on May 11, 2001. At 8:11 p.m. Deputy Martinez called Sergeant [redacted] and requested that he be transferred. At 8:21 p.m. Sergeant [redacted] sent Deputy Martinez a MDT message, "Gil I need a vehicle slip." At 8:22 p.m. Deputy Martinez responded that he was en route. At 8:22 p.m. Deputy Martinez made an inquiry for [redacted] DOB [redacted] At 8:24 p.m. he made an inquiry for [redacted] DOB [redacted] At 8:26 p.m. he did a warrant check for [redacted] DOB [redacted] At 8:26 p.m. he did a California Driver's License inquiry for CDL # [redacted] which returned to a different [redacted] At 9:00 p.m. Deputy Martinez's shift ended.

LEGAL ANALYSIS

Penal Code section 802 bars commencing the prosecution of misdemeanors more than one year after the commission of the offense. Penal Code sections 647(b) and 153 are misdemeanors. Therefore, Deputy Martinez cannot be prosecuted for these violations.

To convict Deputy Martinez of unlawful oral copulation in violation of Penal Code section

288a(k), it must be proved beyond a reasonable doubt that [redacted] orally copulated Deputy Martinez against her will because he threatened to use his authority to arrest her if she did not. (CALJIC 10.16). The only evidence of this is [redacted] statements to investigators and [redacted] lacks sufficient credibility to prove this allegation beyond a reasonable doubt.

As described by her friend [redacted] is "all messed up with drugs" and has psychological problems that medication would probably help. She is a convicted felon who did not successfully complete her parole, and tried to elicit $10 from investigators as a reward for her cooperation. She has multiple arrests for prostitution and failures to appear, and currently has an outstanding warrant for her arrest in case number [redacted] She has at least 15 different names by which she calls herself. Further, there are multiple inconsistencies between her version and [redacted] version of what happened from which a jury might conclude that both were less than forthcoming.

In order to convict Deputy Martinez and Sergeant [redacted] of conspiring to obstruct justice in violation of Penal Code section 182(a)(5), it must first be proved beyond a reasonable doubt that each entered into an agreement to obstruct justice and that one or both of them committed an overt act in furtherance of the conspiracy. There is insufficient evidence to prove that Deputy Martinez and Sergeant [redacted] entered into any agreement to obstruct justice.

The circumstantial evidence which points to a conspiracy between Sergeant [redacted] and Deputy Martinez is that Sergeant [redacted] advised Deputy Martinez of Conaway's allegations, that he transferred Deputy Martinez to a telephone line on which their conversation would not be recorded, and the inferences drawn by [redacted] from Deputy Martinez's telephone conversation in her presence.

Sergeant Johnson may have used poor judgment in advising Deputy Martinez of [redacted] allegations before investigating them further. However, poor judgment alone is not a violation of the law. Clearly, Sergeant [redacted] was incredulous when he heard [redacted] allegations. Describing the call to Deputy Martinez and exclaiming, "I bullshit you not!" was a natural and reasonable reaction to such a call.

In hindsight, transferring Deputy Martinez's second call so that there was no recording may appear to be a mistake because it does allow speculation as to what was said during that call. However, it is perfectly reasonable for a supervisor to counsel and advise a subordinate in a confidential, yet lawful, manner. The absence of a recording is not evidence that unlawful conduct occurred during the conversation.

Even if [redacted] statement that Deputy Martinez spoke on the phone with his watch commander while destroying the videotape was completely true, there is no evidence to suggest that it was Sergeant [redacted] not watch commander Lieutenant Zabokrtsky, to whom Deputy Martinez was speaking on the phone at the time he allegedly recovered the tape.

When circumstantial evidence permits two reasonable interpretations, one of which points to a

person's innocence, the jury must adopt that interpretation, and reject any interpretation that points to a person's guilt. (CALJIC 2.01). Here there is a reasonable interpretation of the evidence which points to Sergeant [redacted] innocence.

CONCLUSION

The statute of limitations bars prosecuting Deputy Martinez for engaging in prostitution or destroying evidence. In addition, there is insufficient credible evidence to prosecute Deputy Martinez for using threat of arrest to force [redacted] to orally copulate him and the evidence that Sergeant [redacted] conduct was in furtherance of a conspiracy with Deputy Martinez is subject to a reasonable interpretation which points to his innocence. We therefore decline to initiate criminal proceedings against Deputy Martinez and Sergeant [redacted] We are closing our file and will take no further action in this matter.



County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



LEROY D. BACA, SHERIFF

May 3, 2004

Deputy Gilbert Martinez, [redacted]

Deputy Martinez:

On April 8, 2004, you were served with a Letter of Intention indicating your right to respond to the Sheriff's Department's pending disciplinary action against you, as reported under File Number IAB 2096494. You were also advised of your right to review the material on which the discipline was based.

You did exercise your right to respond. However, after review and consideration of the response submitted to support your position, your Division Chief determined that the recommended discipline is appropriate.

You are hereby notified that you are discharged from your position of Deputy Sheriff, Item No. 2708A, with this Department, effective as of the close of business on April 29, 2004.

An investigation under File Number IAB 2096494, conducted by Internal Affairs Bureau, coupled with your own statements, has established the following:

1. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or 3-01/050.10, Performance to Standards; and/or 3-01/050.05, Performance of Duty; and/or 3-01/030.07, Immoral Conduct, on or about March 18, 2002, while on duty and in your patrol vehicle, you engaged in sexual acts with a prostitute known as [redacted] including but not limited to, receiving oral sex and/or engaging in sexual intercourse. By your actions, you have brought discredit upon yourself and the Los Angeles County Sheriff's Department.

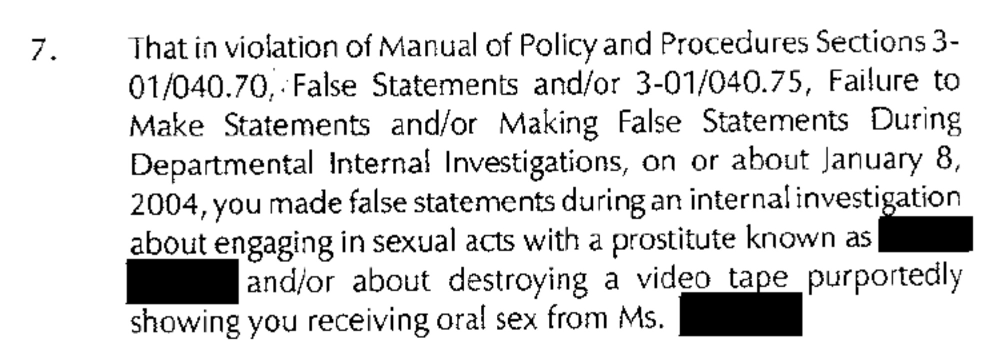
2. That in violation of Manual of Policy and Procedures Sections 3-01/040.70, False Statements and/or 3-01/040.75, Failure to Make Statements and/or Making False Statements During Departmental Internal Investigations, on or about January 8, 2004, you made false statements during an internal investigation about engaging in sexual acts with a prostitute known as [redacted]

3. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or 3-01/050.10, Performance to Standards; and/or 3-01/050.05, Performance of Duty; and/or 3-01/030.07, Immoral Conduct, on or about May 11, 2001, while on duty and in your patrol vehicle, you engaged in sexual acts with a prostitute known as [redacted] including but not limited to, receiving oral sex. By your actions, you have brought discredit upon yourself and the Los Angeles County Sheriff's Department.

4. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior and/or 3-01/030.15, Conduct Toward Others, on or about May 11, 2001, while on duty and in your patrol vehicle, you used your position as a law enforcement officer to obtain sexual favors from a prostitute known as [redacted] when you informed her that she could orally copulate you or "catch a case," or words to that effect. By your actions, you have brought discredit upon yourself and the Los Angeles County Sheriff's Department.

5. That in violation of Manual of Policy and Procedures Sections 3-01/040.65, Tampering With Evidence and/or 3-01/040.76, Obstructing an Investigation, on or about May 11, 2001, you destroyed and/or burned a video tape which purportedly showed you receiving oral sex from a prostitute while on duty.

6. That in violation of Manual of Policy and Procedures Section 3-01/030.10, Obedience to Laws, Regulations and Orders, on or about May 11, 2001, you had a public contact with [redacted] made a driver's inquiry on the Mobile Digital Terminal (MDT), and then failed to log the public contact, in violation of Field Operations Directive 00-04.



7. That in violation of Manual of Policy and Procedures Sections 3-01/040.70, False Statements and/or 3-01/040.75, Failure to Make Statements and/or Making False Statements During Departmental Internal Investigations, on or about January 8, 2004, you made false statements during an internal investigation about engaging in sexual acts with a prostitute known as [redacted] and/or about destroying a video tape purportedly showing you receiving oral sex from Ms. [redacted]

In taking this disciplinary action, your record with this Department has been considered, and a thorough review of this incident has been made by Department executives, including your Unit and Division Commanders.

You may appeal the Department's action in this matter pursuant to Rules 4.02, 4.05 and 18.02 of the Civil Service Rules.

You may, if you so desire, within fifteen (15) business days from the date of service of this notice of discharge, request a hearing on these charges before the Los Angeles County Civil Service Commission, 222 North Grand Avenue, Los Angeles, California 90012.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

LEROY D. BACA, SHERIFF

William T. Stonich

WILLIAM T. STONICH
UNDERSHERIFF

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures and Civil Service Rules.

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Attorney for: COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT

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CIVIL SERVICE COMMISSION

COUNTY OF LOS ANGELES

In the Matter of the Discharge of GILBERT MARTINEZ Appellant, v. COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT, Respondent.	**CASE NO. 04-170** **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement/Release ("Agreement" and/or Settlement Agreement"and/or "Release") is entered into by and between Respondent COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT, THE COUNTY OF LOS ANGELES, the COUNTY OF LOS ANGELES' employees, agents, representatives, its attorneys, claims adjustors, investigators, insurers, elected officials, heirs, executors, administrators, successors, assigns (hereinafter individually and/or collectively sometimes referred to as "Respondent" or "the Department" or "the County" or "the County of Los Angeles") and Appellant GILBERT MARTINEZ, his attorneys, employees, agents,

representatives, heirs, executors, administrators, successors, and assigns (hereinafter individually and/or collectively sometimes referred to as "Appellant").

RECITALS

A. Appellant was employed with the COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT in the position of Deputy Sheriff.

B. Appellant was discharged by the Department and Appellant appealed the decision to discharge him to the Civil Service Commission.

C. The Los Angeles County Employees Retirement Association granted Appellant an industrial disability retirement effective April 29, 2004.

D. The parties wish to resolve this dispute by this Agreement in accordance with the terms set forth hereinafter.

E. It is the intent of this Agreement to resolve all claims and allegations, whether based on tort, statute, contract, discrimination, retaliation, or otherwise, that Appellant has and/or that could have been asserted, as of the date of the signing of this Agreement.

NOW, THEREFORE, in consideration of the covenants and promises herein contained, it is agreed as follows:

1. By virtue of execution of this Agreement, the Department rescinds the Letter of Discharge dated May 3, 2004, and, instead, acknowledges Appellant's industrial disability retirement from the Department effective April 29, 2004.

2. Appellant shall dismiss with prejudice all complaints and claims filed against the County of Los Angeles or the Department connected with or arising out of his employment including, but not limited to, a charge of discrimination filed on October 14, 2004 with the California Department of Fair Employment and Housing, Case No. 340-2005-00090, a claim for damages filed with the County of Los Angeles on October 23, 2004, and a claim filed with the Equal Employment Opportunity Commission, Case number 340-2005-00090. If there are any other complaints or claims filed by Appellant relating to or in any way connected with his employment with the Department, Appellant expressly and unequivocably recognizes and agrees that they are within the scope of this

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Agreement and shall be dismissed within two (2) days of the execution of this Agreement.

3. The Department agrees to provide a CCW endorsement on Appellant's retirement card in accordance with California Penal Code Section 12027.

4. Upon execution of this Settlement Agreement, Appellant will immediately, and in any event within two (2) days of the execution of this Agreement, withdraw, in writing, his request for a hearing before the Civil Service Commission concerning this matter. Further, by executing this Settlement Agreement, Appellant's appeal, Case No. 04-170, shall be deemed withdrawn and dismissed finally and irrevocably. If Appellant does not submit this letter within two (2) days after execution of this Settlement Agreement, this Settlement Agreement itself will serve to constitute the withdrawal by Appellant of his appeal in Case No. 04-170.

5. Appellant will not receive any back pay, salary, interest, benefits, financial or other consideration as a result of this Agreement.

6. Appellant agrees and undertakes that he will not apply for, seek or accept employment, in any capacity and at any time, with the COUNTY OF LOS ANGELES and/or any of the Departments or entities within the COUNTY OF LOS ANGELES.

7. Appellant's retirement benefits are not addressed by this Settlement Agreement and Release, and Appellant agrees and recognizes that any issues regarding retirement benefits, if any, shall be resolved with and determined by the Los Angeles County Employees Retirement Association.

8. Appellant and his attorneys agree and recognize that all of Appellant's legal fees, attorney's fees and costs in all proceedings and with respect to all matters addressed by or related to this Agreement are Appellant's responsibility and not the County's responsibility.

9. Appellant agrees not to pursue any issues raised by and/or that could have been raised by his civil service appeal in any other forum whatsoever. Appellant is not to pursue any further claims, actions, proceedings, complaints, protests of any sort or nature, including but not limited to, any complaint, grievance, letter complaint, or oral complaint against Respondent in connection with any allegations which relate in any way to this matter including, but not limited to, his discharge, his employment relationship with the COUNTY OF LOS ANGELES, and/or the investigation conducted and action taken prior to and/or subsequent to his discharge.

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10. In consideration of the terms and conditions set forth herein, Appellant agrees to fully release, acquit and forever discharge the COUNTY OF LOS ANGELES, the COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT, and all of their present and former officers, employees and agents of the County, and their heirs, successors, assigns, and legal representatives from any and all liability whatsoever for any and all claims arising out of or connected with the employment relationship between the COUNTY OF LOS ANGELES and Appellant concerning the subject matter of the proceedings and events between the parties referred to herein.

11. Appellant agrees not to file in any state or federal court or before any state or federal agency, or before any tribunal, be it administrative or judicial or legislative or executive, any charges or complaints relating in any way to the above-described disputes or to any other matter arising prior to the execution of this Agreement, in connection with any allegations which relate in any way to his discharge, termination, his employment relationship with the Department, any claim he could have brought up to and including the date of this Agreement in connection with his discharge, any claim he could have brought up to and including the date of this Agreement in connection with claims in tort and/or contract, claims of discrimination, retaliation, or any other matter which would be the subject of federal or state laws involving employment discrimination, including, but not limited to, any claim which was the subject of any petition, pleading, document and/or other writing filed by Appellant up through the date of this Agreement with the Civil Service Commission.

12. Appellant agrees to withdraw from consideration any charges or complaints, including, but not limited to the California DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING ("DFEH") or Federal EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ("EEOC") charge or charges currently before any state or federal court or agency, the Commission or any other governmental entity which relates to the COUNTY or COUNTY's past or present employees, agents and/or officials, in connection with any allegations which relate in any way to his termination, his employment relationship with the COUNTY, any claim he could have brought up to and including the date of this Agreement in connection with claims of discrimination, retaliation, or any other matter which would be the subject of the federal or state laws involving employment discrimination, including any claim which was the subject of any petition filed by Appellant up through the date of

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this Agreement with the Commission.

13. Appellant specifically acknowledges that he has not been the subject of discrimination in any form, including, but not limited to, discrimination based upon age, race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, parental status, or sex, and that he has no claim against the Department for any such discrimination, whether any such claim is presently known or not known by him.

14. Appellant understands and agrees that all of his rights under § 1542 of the Civil Code of the State of California are hereby expressly waived and relinquished. Said § 1542 reads as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected the settlement with the debtor."

Appellant agrees that adequate consideration supports this waiver.

15. Notwithstanding the provisions of § 1542, and for the purpose of implementing a full and complete release and discharge of the released parties, Appellant expressly acknowledges that this Agreement and Release are intended to include in its effect, without limitations, all claims which Appellant does not know or suspect to exist against COUNTY at the time of execution, hereof, and that this Agreement contemplates the extinguishment of any claim or claims, in connection with any claim he could have brought up to and including the date of this Agreement in the federal or state laws involving employment discrimination, including any claim which was the subject of any petition filed by Appellant up through the date of this Agreement with the Commission.

16. Appellant acknowledges that he has read and understands the terms of this Settlement Agreement, that he has had the option of reviewing it with counsel of his own choosing and that he is relying solely upon the content of this Agreement and Release and is not relying on any other representation whatsoever of the released parties as an inducement to enter into this Agreement.

17. The parties further agree that this Settlement Agreement shall not be considered, cited or used in future disputes as establishing past precedent or past employment practice. This Agreement

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resolves the dispute between this Appellant and the Department, and is not to be applied to any other facts or disputes, with the exception of any future proceedings, including, but not limited to, civil service proceedings involving, relating to and/or concerning this Appellant and the Department.

18. This document sets forth the entire agreement between the parties and may not be altered, amended, or modified in any respect, except by writing duly executed by the parties affected. All other understandings, oral agreements and writings are expressly superseded hereby and are of no further force or effect.

19. Appellant agrees to cooperate fully and to execute any and all supplementary documents and to take all additional actions that may be necessary and appropriate to give full force and effect to the basic terms and intent of this Agreement and which are not inconsistent with its terms. Appellant and each of his past, present and/or future representatives, attorneys and/or employees, agents and officials agree that they will make no statements inconsistent with any of the provisions of this Agreement.

20. This Settlement Agreement and Release is to be construed and interpreted as if both parties participated in the drafting of this Settlement Agreement. Any ambiguities shall be resolved in favor of upholding the purpose of this Settlement Agreement.

21. The parties further agree that this Settlement Agreement shall not be considered, cited or used in future disputes as establishing past precedent or past employment practice. This Agreement resolves the dispute between Appellant and the Department, and is not to be applied to any other facts or disputes. The existence of this Agreement, the terms of this Agreement and/or the resulting discipline against Appellant cannot be published or communicated to anyone else with the exception of Appellant's spouse, attorney, or accountant, or the Department's attorneys or executives. Such communication is permissible where County regulations or policies require disclosure to County departments and/or County management and/or where disclosure to any entity or person is required by law.

22. Appellant acknowledges and recognizes that the compromise and settlement which form the basis of this Agreement have been arrived at after thorough bargaining and negotiation and represent a final, mutually agreeable compromise.

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23. The date of the last signature placed on this Settlement Agreement shall hereinafter be known as the "date of execution" and/or "the effective date" of this Agreement.

24. Appellant represents and agrees that he has carefully read and fully understands all of the provisions of the Agreement, and that he is voluntarily, and without duress or undue influence, entering into this Agreement.

25. It is understood and agreed that Appellant is currently unaware of any claim, right, demand, debt, action, obligation, liability, or cause of action that Appellant may have against the Department and/or any of its managers, law enforcement personnel, agents, servants, or employees which has not been released by Appellant in this Release.

IN WITNESS WHEREOF, the undersigned have executed this Settlement Agreement and Release on the dates hereinafter indicated. Said Agreement and release may be signed in counterparts.

DATED: January ____, 2005 ______________________________
GILBERT MARTINEZ, Appellant

DATED: January ____, 2005 ______________________________
CHIEF RONNIE M. WILLIAMS, COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT

APPROVED AS TO FORM:

Dated: January ____, 2005 LAW OFFICES OF HAUSMAN & SOSA, LLP

By: ______________________________
VINCENT C. McGOWAN
Attorney for COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT

Dated: January ____, 2005 GOLDWASSER & GLAVE LLP

By: ______________________________
CHARLES GOLDWASSER
Attorney for Appellant GILBERT MARTINEZ

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DATED: ~~January~~ Feb 1, 2005

GILBERT MARTINEZ, Appellant

DATED: ~~January~~ FEB 8, 2005

CHIEF RONNIE M. WILLIAMS, COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT

APPROVED AS TO FORM:

Dated: ~~January~~ Feb 8, 2005

LAW OFFICES OF HAUSMAN & SOSA, LLP

By: ______________________
VINCENT C. McGOWAN
Attorney for COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT

Dated: ~~January~~ February 1, 2005

GOLDWASSER & GLAVE LLP

By: ______________________
CHARLES GOLDWASSER
Attorney for Appellant GILBERT MARTINEZ